

**CALENDAR ITEM
C35**

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06/29/15

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PRC 3186.1

M. Schroeder

**TERMINATION AND ISSUANCE OF A GENERAL LEASE – RIGHT-OF-WAY USE,
AND ENDORSEMENT OF SUBLEASE**

LESSEE:

Samoa Pacific Cellulose, LLC

APPLICANT/SUBLESSOR:

Humboldt Bay Harbor, Recreation and Conservation District

SUBLESSEE:

DG Fairhaven Power, LLC

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the Pacific Ocean, adjacent to Assessor's Parcel Number 401-111-006, near Samoa, Humboldt County.

AUTHORIZED USE:

LEASE: Continued use and maintenance of a 36-inch inside diameter effluent outfall pipeline.

SUBLEASE: Use of effluent outfall pipeline.

LEASE TERM:

LEASE: 25 years, beginning August 14, 2013.

CONSIDERATION:

\$450 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC PROVISIONS:

Insurance:

Liability insurance in an amount no less than \$1,000,000 per occurrence.

Surety:

Surety bond or other security in the amount of \$50,000.

OTHER PERTINENT INFORMATION:

1. Applicant has the right to use the upland adjoining the lease premises.

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2. On July 19, 1993, the Commission authorized a General Lease – Right-of-Way Use to Louisiana – Pacific Corporation for the extension, reconstruction, operation and maintenance of an existing effluent outfall pipeline associated with its pulp mill and a temporary construction easement. That lease will expire on July 21, 2023. On June 19, 1998, the Commission authorized an assignment of the lease from Louisiana – Pacific Corporation to Louisiana – Pacific Samoa, Inc. The Commission authorized a second lease assignment on February 5, 2001, from Louisiana – Pacific Samoa, Inc. to Samoa Pacific Cellulose, LLC. A third assignment was authorized on February 9, 2006, from Samoa Pacific Cellulose, LLC to Evergreen Pulp, Inc. However, the assignment document was never fully executed. On February 6, 2009, Freshwater Pulp Company, LLC (Freshwater) purchased the pulp mill and associated effluent outfall pipeline from Evergreen Pulp, Inc. On August 14, 2013, Freshwater sold the pulp mill to the Humboldt Bay Harbor, Recreation and Conservation District (District). The District is now applying for a new General Lease – Right-of-Way Use and approval of a sublease.
3. Staff recommends termination of the existing lease in order to ensure that the applicant (District) is properly covered by the issuance of a new lease for the anticipated uses described below.
4. The District's current use of the effluent outfall pipeline is to discharge stormwater from the former pulp mill site. Proposed future use has not been finalized but the District has advised it may include discharging of effluent from several freshwater and marine aquaculture operations. DG Fairhaven Power, LLC (DG Fairhaven) owns a biomass energy power plant in Samoa for processing of wood waste into electricity. An effluent outfall pipeline owned by DG Fairhaven connects to the effluent outfall pipeline owned by the District. Since 1986, DG Fairhaven has been discharging on average 146,000 gallons per day of effluent with a maximum of 350,000 gallons per day. Out of the 144 diffuser ports on the District's pipeline, only four are needed to discharge effluent by DG Fairhaven. Historically, the pulp mill used the effluent outfall pipeline to discharge wastewater from processing of woodchips into bleached pulp for commercial purposes. The pulp mill discharged 15,000,000 gallons per day when fully operational.
5. An independent contractor completed an inspection in 2008 and found the effluent outfall pipeline to be in good working condition and functioning as engineered. Subsequently, in 2014, another inspection was completed and the entire diffuser section of the effluent outfall pipeline was found to be clogged with sediment and repairs were recommended. At least 90

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days prior to placing the outfall into service, the District shall provide Lessor's staff a repair plan and schedule for review and approval.

6. On April 26, 2012, the North Coast Regional Water Quality Control Board adopted effluent permit order no. R1-2012-0027, beginning July 1, 2012, and expiring on June 30, 2017. Pursuant to the permit, DG Fairhaven is required to file a report of waste discharge in accordance with Title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than June 30, 2016. The District, as the owner of the effluent outfall pipeline, entered into a separate agreement with DG Fairhaven. Staff has reviewed the outfall agreement and recommends approval of a sublease.
7. **Termination of Lease No. PRC 3186.1 and Approval of Sublease:** The staff recommends that the Commission find that the termination of Lease No. PRC 3186.1 and approval of a sublease, subject to the issuance of a new lease, do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

8. **Issuance of Lease:** The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

Authority: Public Resources Code section 21084 and California Code of Regulations, Title 14, section 15300 and California Code of Regulations, Title 2, section 2905.

9. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by California Code of Regulations, Title 2, section 2954 is not applicable.

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EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Termination of Lease and Approval of Sublease:

Find that the termination of Lease No. PRC 3186.1 and approval of a sublease, subject to the issuance of a new lease, are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activities are not projects as defined by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

Issuance of Lease:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, Title 2, section 2905, subdivision (a)(2).

AUTHORIZATION:

1. Authorize termination, effective August 13, 2013, of Lease No. PRC 3186.1, a General Lease – Right-of-Way Use, issued to Samoa Pacific Cellulose, LLC.
2. Authorize issuance of a General Lease – Right-of-Way Use to Humboldt Bay Harbor, Recreation and Conservation District, beginning August 14, 2013, for a term of 25 years, for the continued use and maintenance of a 36-inch inside diameter effluent outfall pipeline as described in Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; consideration: annual rent in the amount of \$450, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; liability insurance in an amount no less than \$1,000,000 per occurrence, and surety in the amount of \$50,000.
3. Approve by endorsement a sublease from Humboldt Bay Harbor, Recreation and Conservation District to DG Fairhaven Power, LLC.

EXHIBIT A

PRC 3186.1

LAND DESCRIPTION

A 50 feet wide strip of tide and submerged land situated in the bed of the Pacific Ocean, County of Humboldt, State of California, lying adjacent to Lot 1 of fractional Section 20, Fractional Township 5 North, Range 1 West, Humboldt Meridian as shown on Official U.S. Government plat approved October 22, 1890, and lying 25 feet on each side of the following described centerline:

BEGINNING at the intersection of the centerline of the existing outfall pipeline with the ordinary high water mark of the Pacific Ocean, said point bears North $10^{\circ} 43' 21''$ West approximately 4496.37 feet from NGS Monument D 735 (PID LV0355); thence along said centerline North $58^{\circ} 15' 31''$ West approximately 8082.50 feet to terminus of said centerline.

The sidelines of said strip to be lengthened or shortened as to begin on the ordinary high water mark of said Pacific Ocean and to terminate at a line perpendicular to the terminus of said centerline.

BASIS OF BEARINGS for this description is the California Coordinate System of 1983, Zone 1.

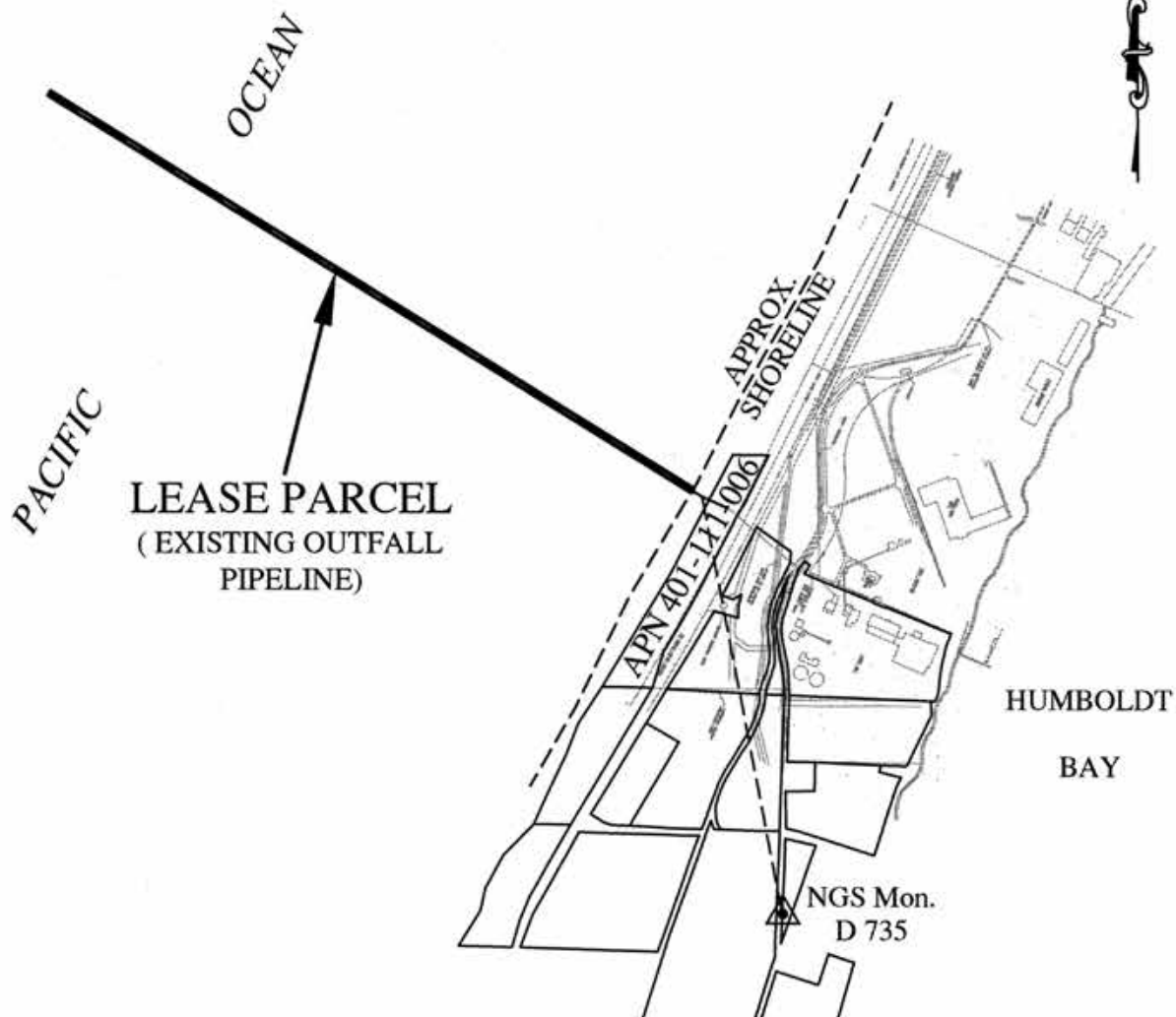
END OF DESCRIPTION

Prepared 08/19/14 by the California State Lands Commission Boundary Unit



NO SCALE

SITE



1 TCP DRIVE, NEAR SAMOA

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 3186.1
HUMBOLDT BAY HARBOR,
RECREATION &
CONSERVATION DISTRICT
APN 401-111-006
GENERAL LEASE -
RIGHT-OF-WAY USE
HUMBOLDT COUNTY



TS 08/19/2014